IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3407 OF 2004.

Avinash Dharmadhikari & anr. ... Applicants.
Versus.
Ramdas Ganpat Nikhare-Patil
and another. ... Respondents.

Shri A.V.Anturkar for the Applicants.

Ms.Rajashree Gadhvi, A.P.P. for the Respondent-State.

CORAM : ABHAY S. OKA, J.

DATED : 20th Sept., 2005.

P.C.:

1. Heard the learned Counsel appearing for the Applicant and the learned A.P.P. for the State. The challenge in this petition is to the order dated 4th December 2003 passed by the learned Magistrate and to the Judgment and order dated 5th July 2004 passed by the Sessions Court by which Revision Application filed by the Applicant for challenging the order dated 4th December 2003 has been dismissed.

2. The Applicants are accused in a private complaint filed by the Respondent No.1. The application on which the impugned order was passed by the learned Magistrate is an application made by the Applicant for recall of the order issuing process. It appears that the said application was made on the basis of the decision of the Apex Court in the case of K.M.Mathew v/s. State of

Kerala. Now, it is a settled position in view of the decision of the Apex Court in the case of Adalat Prasad that the law laid down in the case of K.M.Mathew is no longer a good law and the application for recall of the order issuing process is not maintainable. In view of this decision, no fault can be found with the impugned orders as the Application made by the Applicant was itself not maintainable.

3. Hence there is no merit in the Application and the same is rejected.

4. At this stage the learned Counsel for the Applicants prays that ad-interim relief granted on 19th August 2004 be continued for a reasonable time, as the Applicants desire to challenge the original order issuing process by filing appropriate proceedings. Considering the fact that ad-interim relief granted by this Court is operating for more than one year, request deserves to be granted. Accordingly notwithstanding the dismissal of the Application, ad-interim relief granted on 19th August 2004 will continue to operate for a period of three weeks from today. It is made clear that the rejection of this Application will not prevent the Applicant from adopting appropriate proceedings in accordance with law for challenging the order issuing process. It is obvious that if such a remedy is adopted, it will be considered on its own merits. The

learned Counsel for the Applicants pray that necessary clarification may be made as confirmation of the order passed by the Courts below may affect merits of the remedy which the Applicants propose to adopt. This Court has confirmed the orders passed by the Courts below only on the ground that the Application for recall of process was not maintainable and therefore, it is not necessary to issue any further clarification.

Judge.